



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,490	09/05/2003	Joseph N. Logan	DEME / 10C	8368
26875	7590	03/02/2006	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			LEWIS, RALPH A	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 03/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary

Application No.

10/656,490

Applicant(s)
--------------

LOGAN ET AL.

**Examiner**

**Ralph A. Lewis**

Art Unit	
----------	--

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.  
2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**Ex parte Quayle**

This application is in condition for allowance except for the following formal matters.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

**Clarification Required Regarding Priority and Inventorship**

The first line of the specification indicates that the present application is a Continuation of 09/632,260 (filed 8/4/2000 and patented 6,292,251 on 2/17/2004) and a Continuation-in-Part (CIP) of 09/009,205 (filed 8/4/2000 and patented 6,200,134 on 2/13/2001). A review of the application indicates that it has the disclosure of the earlier application 09/009,205, rather than the same disclosure of the later application 09/632,260. Since the present disclosure is different from the parent application 09/632,260, it cannot be properly called a "Continuation" of the parent application, but rather a "Continuation-in-Part" (MPEP 201.07 "The disclosure presented in the continuation must be the same as that of the original application.").

Consequently, since the present application is a CIP of the parent (09/632,260) it requires a newly executed oath or declaration rather than a photocopy of the parent's declaration (See MPEP 602.05(a)).

Additionally, if there is a change in the inventorship in a continuing application filed under 37 CFR 1.53(b)(1) then the continuing application must be accompanied by a request for changing the inventorship, otherwise it must be made filing a request under 37 CFR 1.48(a) (See MPEP 201.03(E) (last paragraph page 200-9)). In the present application, the originally filed declaration listed Kovac and Knox as the inventors. If there is a change in that inventorship, then it must be corrected through 37 CFR 1.48(a).

The current Quayle action is based on the understanding that applicant has priority to the earlier application (09/009,205) through the parent (09/632,260) based in-part on the parent's statement incorporating by reference the earlier application at column 1, lines 5-10 of 6,692,251. Additionally, it is understood that the correct inventorship has been named (or will be corrected), otherwise, rejections under 35 U.S.C. 102(f) and (g) may apply.


### **In Summary**

- Since the present application is a CIP of the parent 09/632,260 a new oath or declaration is required identifying the present application.
- If Kovac and Knox are not the inventors of the presently claimed invention, then a request under 37 CFR 1.48(a) is required (see MPEP 201.03(E)).
- The first line of the specification must be amended to properly reflect the status of the present application as a Continuation-in-Part of the parent.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712**. Fax (571) 273-8300. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (571) 272-4720.

R. Lewis  
February 24, 2006



Ralph A. Lewis  
Primary Examiner  
Au 3732